

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAPITOL INDEMNITY CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	No. 10 cv 00777
)	
EAGLE HOMES, LLC, an Illinois limited)	Judge Virginia M. Kendall
liability company;)	
EAGLE HOMES – NATURE’S CROSSING)	Magistrate Judge Maria Valdez
LLC, an Illinois limited liability company;)	
EAGLE HOMES – STONEBRIDGE)	
CROSSING LLC, an Illinois limited liability)	
company;)	
KENNETH J. WISNIEWSKI, Individually; and)	
LILLIAN F. WISNIEWSKI, Individually,)	
)	
Defendants.)	

**CAPITOL INDEMNITY CORPORATION’S MOTION FOR THE ENTRY OF
JUDGMENT PURSUANT TO THE ORDER OF DEFAULT**

Now comes the plaintiff, CAPITOL INDEMNITY CORPORATION (“Capitol Indemnity”), by its attorneys, LAWRENCE R. MOELMANN and JOSEPH E. RUBAS of HINSHAW & CULBERTSON LLP, and for its Motion for the Entry of Judgment Pursuant to the Order of Default, states as follows:

1. Capitol Indemnity filed a Complaint against the defendants alleging a breach of an indemnity agreement by the defendants which was made pursuant to certain surety bonds issued by Capitol Indemnity. A copy of the Indemnity Agreement executed by the defendants was attached to the Complaint.

2. Each of the defendants executed a Waiver of Service which has been filed in these proceedings.

3. Pursuant to the Waiver of Service, these defendants were obligated to answer or otherwise plead to the Complaint on or before April 6, 2010.

4. Each of the defendants are in default for failure to answer or otherwise plead on or before April 6, 2010.

5. On May 6, 2010, this Court granted Capitol Indemnity's motion for default and entered an order of default against each of the defendants.

6. This Court set this matter for a Status Hearing on the prove up of damages on June 3, 2010.

7. Capitol submits the affidavit of Patricia A. Framke and the exhibits attached to said affidavit as proof of Capitol's damages. (The Affidavit of Patricia A. Framke is attached as Exhibit A.)

8. In her affidavit, Ms. Framke attests that Capitol has paid \$542,943 for the surety bonds at issue in this case and \$47,544.80 for legal and consulting fees and expenses in investigating, defending, and responding to the claims against the Bonds and enforcing the terms of the Indemnity Agreement. Copies of Capitol's computer data base screen shots for these matters is attached as Group Exhibit C to the affidavit of Patricia A. Framke.

9. The total amount of damages sustained to date by Capitol in this matter is \$590,487.80.

10. Additional claims have been made against the bonds and Capitol has set reserves for such claims, but as of the date of this motion, payments for these additional claims have not yet been made.

11. Section 26 of the Indemnity Agreement states, "Actions by Surety. Suits may be brought hereunder as causes of action may accrue, and the bringing of one or more suits or the recovery of judgments shall not prejudice or bar the bringing of suits upon other causes of action."

12. Pursuant to Section 26 of the Indemnity Agreement, Capitol specifically reserves the right to assert further claims on future payments made on behalf of the Defendants pursuant to the Bonds.

WHEREFORE, Capitol Indemnity Corporation moves that the Court enter an order granting the following relief:

- A. Entering a judgment against the defendants for \$590,487.80 with a reservation of rights by Capitol to assert further claims on future payments made on behalf of the Defendants pursuant to the Bonds;
- B. Granting all other relief which the Court finds to be equitable and just;
- C. A Proposed Order is attached as Exhibit B.

CAPITOL INDEMNITY CORPORATION

By /s/Lawrence R Moelmann
One of Its Attorneys

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